

Trevor L. Uffelman
Drake Law Firm, P.C.
111 N. Last Chance Gulch
Arcade Building, Suite 3J
P.O. Box 1181
Helena, MT 59624-1181
Tel: (406) 495-8080
Fax: (406) 495-1616
trevor@drakemt.com

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

MICHELLE A. KINSEY, Plaintiff, v. DAN BUCKS and STATE OF MONTANA DEPARTMENT OF REVENUE and JOHN DOES 1-5, Defendants.	Case No. _____ State Case No. BDV 2010-1246 (First Judicial District Court, Lewis and Clark County)
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NOTICE OF REMOVAL

DEFENDANTS, through counsel, and without waiving any affirmative

defenses, file this Notice of Removal pursuant to 28 U.S.C. § 1441, *et seq.*, and in support thereof states the following:

1. On December 21, 2010 the Plaintiff filed a Complaint in the Montana First Judicial District Court, Lewis and Clark County styled *Michelle A. Kinsey v. Dan Bucks and the State of Montana Department of Revenue and John Does 1-5*, Civil Case No. BDV 2010-1246. A true and correct copy of the Complaint, Summons, and all other process, pleadings and orders served upon the Department of Revenue (hereinafter “the Department” or “DOR”) are attached hereto as Document 1-1, as provided in 28 U.S.C. § 1441(a).

2. On March 17, 2010 the Department, through counsel, was served a copy of the Summons and Complaint by a process server. Aside from the material in Exhibit A, no other process, pleadings, or orders have been served on the Department in this action.

3. The Department files this Notice of Removal within 30 days of receipt of the Complaint from the Plaintiff. Accordingly, this Notice of Removal is timely.

4. Concurrent with the filing of this Notice of Removal the Department will notify the Plaintiff of the same, through his designated counsel, and the Clerk of the Montana First Judicial District Court, Lewis and Clark County, as provided in 28 U.S.C. § 1446(d).

5. Pursuant to L.R. 3.1(c), attached hereto as Document 1-2 is the civil cover sheet.

Federal Question Jurisdiction

6. This Court has original jurisdiction over all civil actions arising under the laws of the United States pursuant to 28 U.S.C. § 1331. The Plaintiff's Complaint alleges civil actions arising under the Constitution, laws, or treaties of the United States.

7. The Complaint at issue asserts claims arising under the U.S. Constitution asserted pursuant to 42 U.S.C. § 1983 (Compl. at ¶¶ XII-XVIII) and Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (Compl. at ¶¶ XXI-XXIV) Additionally, the Complaint contains state law claims under the Montana Human Rights Act (Compl., ¶¶ XXI-XXIV), the Governmental Code of Fair Practices (Compl. ¶¶ XXI-XXIV), the Wrongful Discharge Act (Compl., ¶¶ VI-XI), and deprivation of state constitutional rights (Compl. ¶¶ XVIII-XX). The state law claims appear to originate from the same alleged facts upon which Plaintiff relies in bringing her Americans with Disabilities Act and section 1983 claims.

8. This Court has supplemental jurisdiction over the state law claims pursuant to 28. U.S.C. § 1367.

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Venue

9. Pursuant to L.R. 1.9(d) venue is proper in the United States District Court for the District of Montana, Helena Division as the facts from which this case arises occurred in and the underlying case was filed in the First Judicial District, Lewis and Clark County, Montana.

WHEREFORE, the Department provides notice of its removal of the above-captioned action from the Montana First Judicial District Court, Lewis and Clark County to the United States District Court for the District of Montana, Helena Division.

DATED this 25th day of March, 2011.

DRAKE LAW FIRM, P.C.

By: /s/ Trevor L. Uffelman
Trevor L. Uffelman

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 2011, a copy of the forgoing document was served on the following persons by the following means:

1 CM/ECF
 Hand Delivery
2 Mail
 Overnight Delivery
 Fax
 Email

1. Clerk, U.S. District Court
2. John C. Doubek
Doubek & Pyfer, LLP
307 N. Jackson
P.O. Box 236
Helena, MT 59624-0236

/s/ Trevor L. Uffelman
Attorney for Defendant